



TSAWWASSEN FIRST NATION
s'cəwaθən məsteyəx^w

Land Act

TFSI HOLDER CORPORATION REGULATION

Date Enacted: 26 September 2012

Order Number: O.064-2012

Last Amended: 13 May 2015

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Table of Regulation Changes

Section(s) Amended	Date	Order number
"TFPI Holder Partnership" definition added s.3(2)(b) repealed and replaced s.3(2)(c) repealed and replaced s.4(1)(d) repealed and replaced s.4(2)(d) repealed and replaced s.4(5) amended s.5(1) repealed and replaced s.5(2) repealed and replaced s.6(9) amended Schedule 1 and 2 amended	27/02/2013	O.011-2013

Contents

AUTHORITY 2
DEFINITIONS 2
**TFSI HOLDER CORPORATION ELIGIBLE TO ACQUIRE AND HOLD TSAWWASSEN
FEE SIMPLE INTEREST 2**
INELIGIBLE OWNERSHIP OF A TFSI HOLDER CORPORATION 3
CONDITIONS OF ACQUISITION AND CERTIFICATE OF TRANSFER 5
ONGOING CERTIFICATION / DETERMINATIONS BY JUDICIAL COUNCIL..... 6
SCHEDULE 1 – STATUTORY DECLARATION 8
SCHEDULE 2 – CONFIRMATION AND UNDERTAKING 10

Authority

1 This regulation is made under sections 16 (1) (e) and 64 of the Tsawwassen First Nation *Land Act*.

Definitions

2 (1) In this regulation,

“**Act**” means the Tsawwassen First Nation *Land Act*.

“**Business Corporations Act**” means the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended, superseded and in effect at any time.

“**Ineligible Corporation**” means any corporation that is not a TFSI Holder Corporation.

“**permitted shareholder**” means any one or more of the following:

- (i) a Tsawwassen Member of the age of 19 years or over; or
- (ii) a person acting as a trustee or in another official capacity for one or more persons, each of whom is a Tsawwassen Member, and which may include a Tsawwassen Member under the age of 19 years or incapable of managing his or her own affairs, and the Tsawwassen Member or Tsawwassen Members for whom the person acting as trustee or in another official capacity holds shares.

“**TFSI Holder Corporation**” means a corporation incorporated or amalgamated under the *Business Corporations Act*, all of the issued and outstanding shares of which are owned legally and beneficially by one or more permitted shareholders, and in which no person other than a permitted shareholder directly or indirectly, legally or beneficially, owns, or has any direct or indirect interest (including, without limitation, by way of mortgage, charge, pledge or security interest) in, any share or has any direct or indirect ability to exercise any control or direction over any share or any direct or indirect right or power to direct the management of the corporation, and the articles of which contain the provisions set out in section 3 (2) of this regulation.

“**TFSI Holder Partnership**” means a partnership that is a “TFSI Holder Partnership” in accordance with the *TFSI Holder Partnership Regulation* under the Tsawwassen First Nation *Land Act*.

[Amended by Order number O.011-2013]

- (2) Unless specifically provided otherwise in this regulation, capitalized terms used and not defined have the same meanings as defined in the Act.

PART 1 – ELIGIBILITY

TFSI Holder Corporation eligible to acquire and hold Tsawwassen Fee Simple Interest

- 3 (1) A TFSI Holder Corporation is hereby prescribed in accordance with section 16 (1) (e) of the Act as a person eligible to apply under section 19 (1) of the Act for

an interest in Tsawwassen Public Lands, and as a person who may hold a Tsawwassen Fee Simple Interest.

(2) In order for a corporation to be eligible to be a TFSI Holder Corporation, the articles of the corporation must contain the following provisions:

(a) “No person may be a shareholder or director of [Insert name of Corporation] unless such person is

(i) a Tsawwassen Member (as defined in the Tsawwassen First Nation Final Agreement among Tsawwassen First Nation, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in right of British Columbia, as amended and in effect at any time) of the age of 19 years or over, or

(ii) a person acting as a trustee or in another official capacity for one or more persons, each of whom is a Tsawwassen Member, and which may include a Tsawwassen Member under the age of 19 years or incapable of managing his or her own affairs, and the Tsawwassen Member or Tsawwassen Members for whom the person acting as trustee or in another official capacity holds shares.”

(b) “[Insert name of Corporation] shall give not less than five business days’ written notice to Tsawwassen First Nation (Attention: Director of Lands) at its administrative offices prior to any issuance, allotment, distribution, assignment, transfer, mortgage, charge, pledge or other disposition whatsoever of any share in the capital of [Insert name of Corporation] and within five business days after the completion of any such transaction, the corporation must provide to the Director of Lands of Tsawwassen First Nation a then current confirmation and undertaking in the form of Schedule 2 to the *TFSI Holder Corporation Regulation* under the Tsawwassen First Nation *Land Act*, under the seal of the corporation, to the satisfaction of the Director of Lands, in accordance with such Regulation.”

[Amended by Order number O.011-2013]

(c) “[Insert name of Corporation] must provide to the Director of Lands of Tsawwassen First Nation annually, no later than the date that the annual report of the corporation under the *Business Corporations Act* (British Columbia) must be filed with the British Columbia Registrar of Companies each year, a confirmation and undertaking in the form of Schedule 2 to the *TFSI Holder Corporation Regulation* under the Tsawwassen First Nation *Land Act*, under the seal of the corporation, to the satisfaction of the Director of Lands, in accordance with such Regulation.”

[Amended by Order number O.011-2013]

Ineligible ownership of a TFSI Holder Corporation

4 (1) If by court order or operation of law a corporation, holding all or any part of a Tsawwassen Fee Simple Interest, that was a TFSI Holder Corporation becomes an Ineligible Corporation, such Ineligible Corporation may continue to hold that Tsawwassen Fee Simple Interest or part thereof, but for no longer than

(a) a period of 2 years after the date on which the former TFSI Holder Corporation became an Ineligible Corporation, or

- (b) a single further period specified by the Executive Council in the special circumstances of a particular case, and
before the end of that 2 year period or further period, if any, specified under section 4 (1) (b), the Ineligible Corporation must either
- (c) become a TFSI Holder Corporation and provide the Director of Lands with such evidence thereof as may be required by the Director, to the satisfaction of the Director, or
- (d) dispose of the Tsawwassen Fee Simple Interest or part thereof held by the Ineligible Corporation to a person referred to in section 16 (1) of the Act, which may include a TFSI Holder Corporation or a TFSI Holder Partnership.

[Amended by Order number O.011-2013]

- (2) If for any reason other than court order or operation of law a corporation, holding all or any part of a Tsawwassen Fee Simple Interest, that was a TFSI Holder Corporation becomes an Ineligible Corporation or is deemed to be an Ineligible Corporation in accordance with section 6 (3) or 6 (6) or if the Judicial Council makes a determination pursuant to section 6 (10), then such Ineligible Corporation may continue to hold that Tsawwassen Fee Simple Interest or part thereof, but for no longer than
 - (a) a period of 30 days after the date on which the former TFSI Holder Corporation became an Ineligible Corporation or was deemed to be an Ineligible Corporation in accordance with section 6 (3) or 6 (6) or the date on which the Judicial Council made the determination pursuant to section 6 (10), as applicable, or
 - (b) a single further period specified by the Executive Council in the special circumstances of a particular case, and
before the end of that 30 day period or further period, if any, specified under section 4 (2) (b), the Ineligible Corporation must either
 - (c) become a TFSI Holder Corporation and provide the Director of Lands with such evidence thereof as may be required by the Director, to the satisfaction of the Director, or comply with section 6 (2), as applicable, or
 - (d) dispose of the Tsawwassen Fee Simple Interest or part thereof held by the Ineligible Corporation to a person referred to in section 16 (1) of the Act, which may include a TFSI Holder Corporation or a TFSI Holder Partnership.

[Amended by Order number O.011-2013]

- (3) The Tsawwassen Fee Simple Interest or part thereof
 - (a) referred to in section 4 (1), held by an Ineligible Corporation reverts to Tsawwassen First Nation immediately after the end of that 2 year period or further period, as the case may be, referred to in section 4 (1) if the Ineligible Corporation has not complied with section 4 (1) (c) or (d) during that period, or
 - (b) referred to in section 4 (2), held by an Ineligible Corporation reverts to Tsawwassen First Nation immediately after the end of the 30 day period or further period, as the case may be, referred to in section 4 (2) if the Ineligible Corporation has not complied with section 4 (2) (c) or (d) during that period.

- (4) Any reversion of a registered Tsawwassen Fee Simple Interest or part thereof pursuant to section 4 (3) will be subject to any other right, title or interest in or to such Tsawwassen Lands existing at the time of such reversion.
- (5) Following a reversion of a Tsawwassen Fee Simple Interest or part thereof under section 4 (3) that is registered in the name of an Ineligible Corporation in the land title office, the Chief Administrative Officer must make an application to the registrar of land titles pursuant to section 22 (1) of schedule 1 of the *Land Title Act* (British Columbia) to effect the registration of that Tsawwassen Fee Simple Interest or part thereof in the name of Tsawwassen First Nation.

[Amended by Order number O.011-2013]

PART 2 – CERTIFICATION

Conditions of Acquisition and Certificate of Transfer

- 5 (1) Prior to the acquisition of a Tsawwassen Fee Simple Interest or part thereof by a TFSI Holder Corporation and prior to the issuance of a certificate of transfer pursuant to section 9 (2) of the Act [*Certificate of transfer requirements*] to a TFSI Holder Corporation, the TFSI Holder Corporation must provide to the Director of Lands
 - (a) one or more statutory declarations, as the case may be, in the form of Schedule 1 to this regulation, including information regarding all of the authorized and issued shares in the capital of the TFSI Holder Corporation, to the satisfaction of the Director of Lands, signed by all of the permitted shareholders of the TFSI Holder Corporation (other than any Tsawwassen Members under the age of 19 or incapable of managing his or her affairs as of the date of the declarations), sworn within the 21 days prior to the date of the certificate of transfer,
 - (b) a certificate or certificates issued pursuant to the *Business Corporations Act*, stating that the TFSI Holder Corporation is a corporation incorporated or amalgamated, validly existing and in good standing under the *Business Corporations Act*, or other similar evidence thereof to the satisfaction of the Director of Lands,
 - (c) a confirmation and undertaking from the corporation, under the seal of the corporation, in the form of Schedule 2 to this regulation, and
 - (d) such other statutory declarations, confirmations and undertakings, certificates and other documents and information as may be required by the Director of Lands.

[Amended by Order number O.011-2013]

- (2) A corporation must not acquire a Tsawwassen Fee Simple Interest or any part thereof, and the Director of Lands may not provide a certificate of transfer pursuant to section 9 (2) of the Act [*Certificate of transfer requirements*] to a corporation unless and until the corporation has met the requirements set out in section 5 (1).

[Amended by Order number O.011-2013]

Ongoing Certification / Determinations by Judicial Council

- 6
- (1) Any corporation that is an owner of all or any part of a Tsawwassen Fee Simple Interest must provide to the Director of Lands annually, no later than the date that the annual report of the corporation under the *Business Corporations Act* must be filed with the British Columbia Registrar of Companies each year, a confirmation and undertaking in the form of Schedule 2 to this regulation, under the seal of the corporation, to the satisfaction of the Director of Lands.
 - (2) Any corporation that is an owner of all or any part of a Tsawwassen Fee Simple Interest must provide to the Director of Lands within 30 days of the Director's request one or more statutory declarations, as the case may be, in the form of Schedule 1 to this regulation, including information regarding all of the authorized and issued shares in the capital of the corporation, signed by all of the permitted shareholders of the corporation (other than any Tsawwassen Members under the age of 19 or incapable of managing his or her affairs as of the date of the declarations) and a confirmation and undertaking in the form of Schedule 2 to this regulation, under the seal of the corporation, each to the satisfaction of the Director of Lands.
 - (3) If a corporation does not provide any statutory declaration or confirmation and undertaking requested under section 6 (2) within such 30 day period, the corporation will be deemed to be an Ineligible Corporation as of the end of such 30 day period and section 4 (2) of this regulation will apply.
 - (4) Any corporation that is an owner of all or any part of a Tsawwassen Fee Simple Interest must give not less than five business days' prior written notice to Tsawwassen First Nation (Attention: Director of Lands) at its administrative offices prior to any issuance, allotment, distribution, assignment, transfer, mortgage, charge, pledge or other disposition whatsoever of any share in the capital of the corporation and within five business days after the completion of any such transaction, the corporation must provide to the Director of Lands a then current confirmation and undertaking in the form of Schedule 2 to this regulation, under the seal of the corporation, to the satisfaction of the Director of Lands.
 - (5) The Director of Lands may request, at any time, any and all statutory declarations, confirmations and undertakings, certificates and other documents and information deemed by the Director to be necessary to confirm whether a corporation is a TFSI Holder Corporation and the corporation must provide such statutory declarations, confirmations and undertakings, certificates and other documents and information to the Director of Lands within 30 days of the Director's request.
 - (6) If a corporation does not submit any statutory declaration, confirmation and undertaking, certificate or other document or information requested under section 6 (5) within such 30 day period, the corporation will be deemed to be an Ineligible Corporation as of the end of such 30 day period and section 4 (2) of this regulation will apply.
 - (7) Should the Director of Lands have reason to believe that any statutory declaration, confirmation and undertaking, certificate or other document or information may be false or inaccurate, the Director may refer the matter to the Judicial Council for a determination.

- (8) In the case of a reference to the Judicial Council under subsection (7), the Judicial Council may
- (a) convene a hearing,
 - (b) compel any declared permitted shareholder or owner, director or officer of the corporation to testify under oath and to supply any and all statutory declarations, confirmations and undertakings, certificates and other documents and information required by the Judicial Council, and
 - (c) call witnesses, who may be required to testify under oath.
- (9) If the Judicial Council makes a determination that an Ineligible Corporation holds all or any part of a Tsawwassen Fee Simple Interest in reliance upon a certificate of transfer issued pursuant to section 9 (2) of the Act that was based upon false or inaccurate information that was knowingly provided by a shareholder or a corporation under section 5 (1), the Tsawwassen Fee Simple Interest or part thereof will automatically revert to Tsawwassen First Nation immediately after the making of the determination, subject to any other right, title or interest in or to such Tsawwassen Lands existing at the time of such reversion, and following such a reversion of a registered Tsawwassen Fee Simple Interest or part thereof that is registered in the name of an Ineligible Corporation in the land title office the chief administrative officer shall make an application to the registrar of land titles pursuant to section 22 (1) of schedule 1 of the *Land Title Act* (British Columbia) to effect the registration of a Tsawwassen Fee Simple Interest or part thereof in the name of Tsawwassen First Nation not less than 30 days following the determination.

[Amended by Order number O.011-2013]

- (10) If the Judicial Council makes a determination that an Ineligible Corporation holds all or any part of a Tsawwassen Fee Simple Interest in reliance upon a certificate of transfer issued pursuant to section 9 (2) of the Act that was based upon false or inaccurate information that was not knowingly provided by a shareholder or corporation under section 5 (1), as the case may be, then section 4 (2) will apply to the Tsawwassen Fee Simple Interest or part thereof held by the corporation.

SCHEDULE 1 – STATUTORY DECLARATION

CANADA)	IN THE MATTER OF section 16(1) of the
)	Tsawwassen First Nation <i>Land Act</i> and the <i>TFSI</i>
PROVINCE OF BRITISH COLUMBIA)	<i>Holder Corporation Regulation</i> regarding the
)	property legally described as follows:
)	
)	[Insert full legal description of the Property]
)	(the “Property”)

I/we, _____ [insert name(s) of shareholder(s)], DO SOLEMNLY DECLARE THAT:

1. I am / we are shareholder(s) of _____ [insert name of the corporation] (the “Corporation”).

2. The authorized share capital of the Corporation is comprised only of the following shares:

<u>Class of Shares</u>	<u>Number of Authorized Shares</u>
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[To be completed as appropriate.]

3. The following persons are the legal and beneficial owners of all of the issued and outstanding shares of the Corporation, and hold or beneficially own the shares set forth opposite their respective names and each address indicated is their respective residential address:

<u>Name of Shareholder or Beneficial Owner</u>	<u>Residential Address</u>	<u>Number and Class Of Shares Held</u>
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[To be completed as appropriate.]

[Amended by Order number O.011-2013]

4. Each of the persons listed in paragraph 3 above is

- (a) a Tsawwassen Member of the age of 19 years or over; or
 - (b) a person acting as a trustee or in another official capacity for one or more persons, each of whom is a Tsawwassen Member, and which may include a Tsawwassen Member under the age of 19 years or incapable of managing his or her own affairs, and the Tsawwassen Member or Tsawwassen Members for whom the person acting as trustee or in another official capacity holds shares
- (a “permitted shareholder”),

and no person other than a permitted shareholder directly or indirectly, legally or beneficially, owns, or has any direct or indirect interest (including, without limitation, by way of mortgage, charge, pledge or security interest) in, any share or has any direct or indirect ability to exercise

any control or direction over any share or any direct or indirect right or power to direct the management of the Corporation.

5. The Corporation was incorporated or amalgamated under the *Business Corporations Act*, S.B.C. 2002, c. 57 and is existing under such statute.
6. I/we make this Statutory Declaration for the express purpose of confirming the eligibility of the Corporation as a TFSI Holder Corporation in accordance with the *TFSI Holder Corporation Regulation* made pursuant to the Tsawwassen First Nation *Land Act*.

AND I/we make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME at _____)
_____, British Columbia)
this _____ day of _____, _____.)
_____)
_____) (Signature)
A Commissioner for taking Affidavits for British) Print Name: _____
Columbia)

[Instruction: One or more statutory declarations in this form must be signed by each permitted shareholder of the Corporation, other than a Tsawwassen Member under the age of 19 years or incapable of managing his or her own affairs.]

SCHEDULE 2 – CONFIRMATION AND UNDERTAKING

To: Tsawwassen First Nation
1926 Tsawwassen Drive
Tsawwassen, BC
V4M 4G2
("TFN")

From: _____ [insert name of the corporation]
_____ [insert address of the corporation]
(the "Corporation")

Re: Section 16(1) of the Tsawwassen First Nation *Land Act* and the *TFSI Holder Corporation Regulation* regarding the property legally described as _____ [insert full legal description of the property]

The Corporation hereby confirms, represents and warrants to TFN, under seal, that, as of the date of this Confirmation and Undertaking:

1. The authorized share capital of the Corporation is comprised only of the following shares:

<u>Class of Shares</u>	<u>Number of Authorized Shares</u>
------------------------	------------------------------------

[To be completed as appropriate.]

2. The following persons are the legal and beneficial owners of all of the issued and outstanding shares of the Corporation, and hold or beneficially own the shares set forth opposite their respective names and each address indicated is their respective residential address:

<u>Name of Shareholder or Beneficial Owner</u>	<u>Residential Address</u>	<u>Number and Class Of Shares Held</u>
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[To be completed as appropriate.]

[Amended by Order number O.011-2013]

3. Each of the persons listed in paragraph 2 above is
 - (a) a Tsawwassen Member of the age of 19 years or over; or
 - (b) a person acting as a trustee or in another official capacity for one or more persons, each of whom is a Tsawwassen Member, and which may include a Tsawwassen Member under the age of 19 years or incapable of managing his or her own affairs, and the Tsawwassen Member or Tsawwassen Members for whom the person acting as trustee or in another official capacity holds shares

(a “permitted shareholder”),

and no person other than a permitted shareholder directly or indirectly, legally or beneficially, owns, or has any direct or indirect interest (including, without limitation, by way of mortgage, charge, pledge or security interest) in, any share or has any direct or indirect ability to exercise any control or direction over any share or any direct or indirect right or power to direct the management of the Corporation.

- 4. The Corporation was incorporated or amalgamated under the *Business Corporations Act*, S.B.C. 2002, c. 57 and is existing under such statute.

AND the Corporation hereby undertakes to give not less than five business days’ prior written notice to TFN (Attention: Director of Lands) at its administrative offices prior to any issuance, allotment, distribution, assignment, transfer, mortgage, charge, pledge or other disposition whatsoever of any share in the capital of the Corporation and within five business days after the completion of any such transaction, the Corporation will provide to the Director of Lands a then current confirmation and undertaking in the form of Schedule 2 to the *TFSI Holder Corporation Regulation*, under the seal of the corporation, to the satisfaction of the Director of Lands, in accordance with the requirements of the *TFSI Holder Corporation Regulation*, to the satisfaction of the Director of Lands.

[Amended by Order number O.011-2013]

DATED: _____

THE CORPORATE SEAL OF THE CORPORATION)
was hereunto affixed in the presence of:)
)
By: _____)
Name:)
Title:) C/S
)
By: _____)
Name)
Title:)
)